19 51 **File No.** LHB 2451

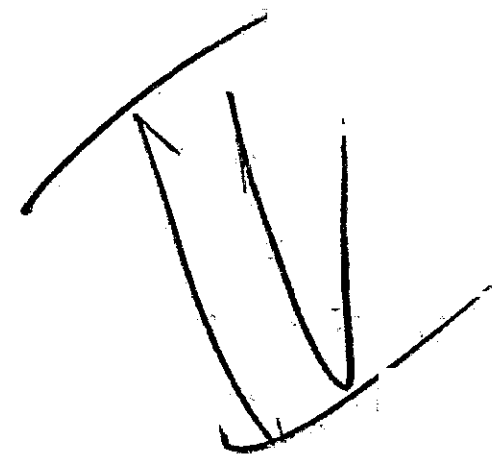
B CLASS

P.W. **DEPARTMENT**

K **BRANCH**

Subject :— Hubli Elec. License
Settlement of purchase
price of the undertaking

B (K) 51



File No.

Std. Sectt. Slip 24-A

[illegible]

Form 75A a.

JOCKET SHEET (B)

[illegible]

File No. _____

_____ DEPT.

_____ BRANCH.

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Date.	To whom sent.	Notes and instructions.
1874	25	Urgent Issue writ v. li ~~&~~ Solicitors to Govt (Messrs Pilkington & Coy) with letters written on p. 7. (1-5-51

Below U.O.R. No.3207/48/70531 dated the 20th September 1950, from Government in the Public Works Department.

No.IA.11/11128 of 1950.
Bombay, 4th December 1950

Returned with compliments.with U.O.R. S.No.90759. dated 17.11.'50.

It is suggested that the points raised by the Accountant General, Bombay may be taken into consideration at the time of giving the award. Since the papers in connection with the valuation of the undertaking are under reference to the Solicitors to Government, these papers may also be sent to them for their views in the matter.

Sd/-

Electrical Engineer to Govt.

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MDH/-
17.4.51.

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LHB 2451.

K. Br. P. W. Deptt.

5660/36/21650.

The file * below deals with the representations of Shri R. K. Jhuremalani and other share holders of the Hubli Elecy. Coy. Ltd., The main request is that the purchase price of the undertaking may be settled and the share holders paid their dues.

2. This question is hanging fire since the license was revoked in 1944 and Govt. elected to purchase the undertaking under the provisions of the I.E. Act, 1910. First Govt. appointed Mr. C.B. Mersh, late El. adviser to the Govt of Central Province to assess and report on the fair market value of the undertaking in accordance with the principles laid down in the proviso to section 5(b) of the I.E. Act 1910 and on the basis of this report Govt. on 26.3.45 made an offer of Rs.6,76,364 for the purchase of the undertaking to the Coy. The Coy. however did not accept the offer and raised certain objections, nor was it prepared to refer the question to arbitration as reqd. by the provision of the I.E. Act, 1910: In accordance with the advice of the Solicitors to Govt., Govt. subsequently decided to appoint an arbitrator expartee, and Mr. Mulleneux was appointed as arbitrator in Jany. 1948. After his appointment was communicated to the Coy. its solicitors gave notice to Govt. to drop the arbitration proceedings till the result of the appeal which the Coy. was making to the Privy Council was known. This notice was replied to by the Solicitors to Govt. who advised Govt. that the arbitrator should proceed with the arbitration work. The report of the arbitrator was recd. in April 1949. It placed the value of the undertaking at Rs.6,65,407 but did not give the award. The papers* were therefore refd. u.o. to the Solicitors to Govt. for their further advise in the matter, which is awaited..

3. In between the Coy. filed three suits against Govt.

(1) ....

* File 5660/36
57729
(with file No.5660/36 VIII & Mr. M's report in two parts)

(1) Suit No. 610 of 1944
Challenging the validity of G.O. No. 5660/36, dt. the 28.1.44, revoking the license.

(2) Suit No. 1385 of 1944
Challenging the validity of G.O. No. 5660/36, dt. the 3.5.44, taking over the ~~xxxx~~ control of the undertaking under the Defence of India Rules.

(3) Suit No. 3085 of 1947.
Claiming certain large amounts by way of damages and/or compensation. for controlling and working the undertaking since 3rd May 1944.

Suits No. (1) & (2) were decided in favour of Govt. by the Bombay High Court both on the original and appellate side. The appeals made by the Coy. in respect of these two suits to the Privy Council have also been decided in favour of Govt. Appeal No.20 of 1950 made by the Coy. to the Supreme Court of India has been dismissed with costs in Decr.1950. As regards suit No. (3) it is still pending. The subject matter of this suit is ~~xxxx~~ under negotiations between the Govt. Solicitors and the Coy.'s Solicitors and from informal enquiries made in the office of the solicitors to Govt. it is understood that the return of the papers reg: the arbitration proceedings refd. to in para 2 above is held up on that account. The Solicitors to Govt. may however be requested u.o. to apprise Govt. of the latest position and to expedite the return of the papers mentioned in the proceeding para, with their remarks indicating what further action Govt. should take towards the settlement of the purchase price of the undertaking and its payment. They may also be requested to give their views ~~xxxx~~ on the points raised in paras 2 & 3 of the A.G.'s letter, No. OA/4033, dt. the 25.8.50 as advised by the El. Engr. to Govt. in his Memo. No. IA11/11128, dt. the 4.12.50 ~~xxxx~~ copies enclosed.

+ Supp A
F.L. No. 5260 [illegible]
21650
Cuttack copy of judgement [illegible]
W.P. 229-23. [illegible]

Files .....

*(1) No.5660/36/11663 (dealing with suit No. 3085 of 1947)

(2) File No.5660/36/64818-28414 (dealing with Writs of Sui Mullenex)

4. Files* noted on the margin which were obtained informally from the office of the Solicitors to Govt. are returned herewith. The attention of the Solicitors is requested to the para. 2 of the O.N. on pp.67-68 of file No. 5660/36/64818-28414.

5. The question of making an appln. to the Registrar of Coys. to take the Coy. into liquidation was also raised in the past and it was deferred till the result of the negotiations refd. to in para. 2 were known. Vide proceedings on pp.45-66 of File No.5160/36 XV put up below. The Solicitors to Govt. may be requested to advise whether the appln. may now be made.

18/4/51.

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CKW
17/4/51.

D. S.

Urgent

[Copy Original in File No LHB 2451]

LHB 2451.

K. Br. P. W. Deptt.

5660/36/21650.

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3. In between the Coy. filed three suits against Govt.

* File 5660/36 57729 (with file No.5660/36 VIII & Mr. M's report in two parts)

(1) Suit No. 610 of 1944
Challenging the validity of G.O. No. 5660/36, dt. the 28.7.44 - cancelling the license.

(2) Suit No. 1386 of 1944
Challenging the validity of G.O. No. 5660/36, dt. the 3.5.44, taking over the ~~Govt~~ control of the undertaking under the Defence of India Rules.

(3) Suit No. 3086 of 1947.
Claiming certain large amounts by way of damages and/or compensation for controlling and working the undertaking since 3rd May 1944.

Suits No. (1) & (2) were decided in favour of Govt. by the Bombay High Court both on the original and appellate site. The appeals made by the Coy. in respect of these two suits to the Privy Council have also been decided in favour of Govt. Appeal No.20 of 1950 made by the Coy. to the Supreme Court of India has been dismissed with costs in Decr.1950. As regards suit No. (3) it is still pending. The subject matter of this suit is ~~main~~ under negotiations between the Govt. Solicitors and the Coy.'s Solicitors and from informal enquiries made in the office of the solicitors to Govt. it is understood that the return of the papers regd the arbitration proceeding's refd. to in para is held up on that account. The Solicitors to Govt. may however be requested u.o. to apprise Govt. of the latest position and to expedite the return of the papers mentioned in the proceeding para. with their remarks indicating what further action Govt. should take towards the settlement of the purchase price of the undertaking and its payment. They may also be requested to give their views also on the points raised in paras 2 & 3 of the A.G.'s letter, No. CA/4033, dt. the 25.8.50 as advised by the El. Engr. to Govt. in his Memo. No. IA11/11128, dt. the 4.12.50 copies enclosed.

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5. The question of making an appln. to the Registrar of Coys. to take the Coy. into liquidation was also raised in the past and it was deferred till the result of the negotiations refd. to in para. 2 were known. Vide proceedings on pp.45-46 of File No.5160/36 XV put up below. The Solicitors to Govt. may be requested to advise whether the appln. may now be made.

Id. Sec.J (Actg.) 18-4-51

J.(Legislation) Dy.Secy. 18-4-51

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CKW
17/4/51.

U/O to the Solicitor to Govt. (M/S Little & Co.) dt 18-4-51

with file Nos: 5660/36/21650
5660/36/28414
5660/36 - XV

LHB. 2451

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K.B.

P.W.D.

Submitted

2. Please see the O.N. dated the 18-4-51. The file No. LHB. 2451 containing this O.N. and also File No. 5660/36/57729, containing report of the arbitrator (Shri Mullaneux) re: valuation of the Hubli Ely. Undertaking refd. to in para. 2 of that O.N. have not yet been recd. back from the Solicitors to Govt. As the matter is pending since long, the Solicitors to Govt. (M/s Little & Co.) may be requested urg. to return all the papers, with their remarks thereon with the least possible delay.

11.8.57

13/8/57.

AAS

D.S.

13/8/57

Immediate

U.O. to the Solicitors to Govt. (M/s. Little & Co) dt. 17th Aug. 1957

SEPARATOR

copy — 1 originals in file no 3207/48.

No.OA/4033 AG.37.
Office of the Accountant General,
Queen's Road,
Bombay,25th Aug. 1950

From

B.C. Dutt,Esqr.,
The Accountant General,
Bombay.

To

The Secretary to the Government of Bombay,
Public Works Department,
Bombay.

Sub: Report on the accounts of the
Hubli Electricity Undertaking.

Sir,

In accordance with the directions contained in Govt. Resolution No.P.W.D.2581/36 dated 12.4.39 that the annual statement of accounts of the Electricity Undertaking should be examined and audited by this office before being rendered to Govt. under Section 11 of the Indian Electricity Act 1910, I beg to forward herewith the audit report on the accounts of the Hubli Electricity Undertaking for the years from 1943-44 to 1948-49. The statement of accounts for the six years in Forms I to IX prescribed in the Indian Electricity Rules,1937, duly prepared and checked, subject to the remarks contained in the audit report are attached.

2. In exercise of the powers conferred by Section 4 of the Indian Electricity Act 1910, Government in their Public Works Department order No.5660/36 dated 28.1.44 revoked, with effect from the 1st May 1944, the Hubli Electric Linense issued in favour of the Hubli Electric Supply Co. Ltd. Under Clause (d) read with clause (g) of Section 5 of the Act, Government elected to purchase the Undertaking and called upon the Co. to hand over possession of the same to Government's representative on the 1st May 1944. The Company having failed to comply with the Government order, Government took over possession of the Utility properties on 4.5.44, under sub-rule 3 of rule 81 of the Defence of India Rules vide Government order Public Works Department No.5660/36 dated 3.5.44. Though six years have elapsed, the terms of purchase have not yet been settled. In the meantime the Managing Agents appear to have issued a fresh debenture loan during 1947. It is not known whether for this purpose they have pledged the properties taken over by Government. The competence and propriety of the Managing Agents in raising any debenture loan in 1947 with or without pledging the properties that have already been taken over by Government may kindly be examined in consultation, if necessary, with the legal Advisors of Government. It may also kindly be considered whether the issue of this debenture loan would in any way prejudice the rights and interests of Government or is in any way likely to affect the price of the assets Government may have to pay. It may also kindly be seen that the delay in fixing the price of the assets and the issue of the debenture loan by the Managing Agents do not operate in any way to throw a heavier burden on the tax payer or the consumers,

3. .....

3. Under Section 5 of the Indian Electricity Act 1910 a licensee is required to sell the undertaking to a local authority or to another person to whom the license is re-issued or to Government on payment of the value of lands, buildings etc. Attempts at appraisement of the value of the utility property appear so far to have failed. In the opinion of Audit, the lands, buildings, works, materials and plant should not be taken over at "replacement value" as the Act does not perhaps contemplate this, nor would this be desirable, even if not debarred by the Act, in view of the present inflated and unstable level of prices in the market. It will be seen that the terms of purchase set forth in clause (b) of section 5 are taken almost verbatim from Section 2 of Electric Lighting Act 1888(51 & 52 Vict. C 12) of Great Britain & Ireland. The purchase price has obviously to be determined with reference to Section 5(b) of the Indian Electricity Act and not section 7(i) ibid. Under section 5(b) allowance for profits, goodwill or other similar considerations is expressly barred in estimating the "then value" of the properties. The object of this Section seems to be, on the one hand, to ensure that the Company shall not find their property taken from them for scrap value, and on the other, to exclude any allowance for profits. Fair market value on a given date may be taken to be what the property is worth i.e. what it would bring if offered for sale by an owner willing, but not compelled, to sell to a purchaser willing, but not compelled, to buy. In the opinion of Audit, the determination of a fair market value in terms of clause (b) of Section 5 is largely to be based on the "Structural value" of the assets at the time of purchase in May 1944 i.e, on actual cost less accrued depreciation. In doing so, the following factors as on the 4th May 1944 will have to be taken into account :-

(a) the nature and condition on 4.5.44 of the lands, buildings, works, materials, plant etc.
(b) Whether on 4.5.44 they were in proper state of repair.
(c) Whether on 4.5.44 they were suitable to and used by the licensee for the purpose of the Undertaking, and
(d) Whether on 4.5.44 they were in such a position as to be ready for immediate working.

A reference is invited in this connection to :-

(a) the footnotes printed on page 225 of "the Law relating to the Electrical Energy in India and Burma" by J.W. Meares.
(b) Para 9 of the same book pages 35-37 and
(c) the foot notes below Section 2 of Electric Lighting Act, 1888 of Great Britain and Ireland (51 & 52 Vict. C.12) printed on pages 65-68 of the "The law relating to Electricity" part I by G.M. Knowles.

4. The important thing is not merely to act on the advice of legal experts but also to take into account the damaged and deteriorated condition of the assets when they were taken over in May 1944.

Yours faithfully,

Sd/- B.C. Dutt,

Accountant General.

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MDH/
17.4.51.